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OFFICE OF PETITIONS

In re Application of	:	
Edgar A. O'Rear III, et al.	:	
Application No. 10/692,171	:	
Filed: October 23, 2003	:	DECISION ON PETITION
Attorney Docket No.	:	UNDER 37 C.F.R. § 1.137(B)
820233:02310	:	
Title: METHOD FOR MAKING AN	:	
ARTICLE WATER RESISTANT AND	:	
ARTICLES MADE THEREFROM	:	

This is a decision on the petition filed October 14, 2008, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

This petition is **GRANTED**.

BACKGROUND AND PROCEDURAL HISTORY

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. § 1.113 in a timely manner to the final Office action mailed January 10, 2008, which set a shortened statutory period for reply of three months. A Request for Continued Examination (RCE) was received on May 8, 2008 along with the associated fee and an amendment, however no extension of time under the provisions of 37 C.F.R. § 1.136(a)

Decision on Petition pursuant to 37 C.F.R. § 1.137(b)

was requested. Accordingly, the above-identified application became abandoned on April 11, 2008. On May 13, 2008, the Office mailed a "Notice Requiring Extension of Time Fee - No New Time Period is Provided" (notice). A notice of abandonment was mailed on July 31, 2008.

A petition pursuant to 37 C.F.R. § 1.137(a) was filed on August 20, 2008, and was dismissed via the mailing of a decision on October 3, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

37 C.F.R. § 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. Since the statement contained in this petition varies from the language required by 37 C.F.R. § 1.137(b)(3), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.137(b)(3) and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

With the petition pursuant to 37 C.F.R. § 1.137(b), Applicant's attorney has included a request for continued examination (RCE), an amendment, the petition fee, and a statement that is being construed as the proper statement of unintentional delay.

Applicant's attorney has again submitted a three-month extension of time. As was indicated on page 5 of the decision on the petition pursuant to 37 C.F.R. § 1.137(a), an extension of time under 37 C.F.R. § 1.136 must be filed prior to the expiration of

the maximum extendable period for reply.¹ Accordingly, since the \$ 550 extension of time submitted with this petition on October 14, 2008 was filed subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to the credit card of Applicant's attorney in due course.

The first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment received on October 14, 2008 - can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.² All other inquiries concerning the status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

¹ See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.